IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.12750 of 2004

Between:

Indian Industrial Mineral Producers

Welfare Association, rep. by its Secretary,
P.Lakshmana Perumal, F-2 P.A.Towers,

Chennai - 600 008

..... PETITIONER

AND

1 Government of India, rep. by its Secretary,

Department of Atomic Energy, Chatrapati Shivaji Maharaj
Marg, Mumbai-400 001
2 Government of India, rep. by its Secretary, Ministry of Mines & Minerals,
New Delhi
3 Government of Andhra Pradesh, rep.

by its Secretary, Department of Industries

and Commerce (M.III) Department, Secretariat, Hyderabad
4 M/s Transworld Garnet India Pvt Ltd., rep. by its

Chairman & Managing Director,
Ramaniyam Arcade, III Floor, E-28, II Avenue, Beasant Nagar, Chennai
5 The District Collector, Srikakulam District at Srikakulam
6 The Commissioner of Geology & Mining,

Department of Geolgoy & Mining, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of "Certiorari" call for the records pertaining to proceedings in G.O.Ms.No.7, Industries & Commerce Department, dt. 05/01/2002 issued by the 3rd respondent and quash the same as being violative of the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concession Rules 1960, the Atomic Energy Act, 1962 and Rules of 1984 laid thereunder, the policy of exploitation of Beach Sand Mineral, in the interest of justice.

Counsel for the Petitioner: Mr. VILAS V.AFZULPURKAR

Counsel for Respondent Nos.1&2: Mr.Deepak Bhattacharjee,

Addl.SC for Central Government

Counsel for Respondent Nos.3,5&6: G.P. for Industries & Commerce

Counsel for the Respondent No.4: Mr. RAMA RAO PHILKHANA

The Court made the following :

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

JUDGMENT: (per **C.V. RAMULU,J)**

At the outset, we may note that this is a *probono publico* litigation filed by Indian Industrial Mineral Producers' Welfare Association, represented by its Secretary P.Lakshmana Perumal, Chennai, Tamilnadu, complaining that the mining lease granted in favour of the 4th respondent – M/s.Transworld Garnet India Private Limited – is contrary to the provisions of Mines and Minerals (Development and Regulation) Act,1957 (for short 'MMRD Act') and the Rules made thereunder, apart from the Atomic Energy Act,1962 and the Rules framed thereunder.

It is stated that India has large reserves of beach sand minerals in the coastal stretches around the country. Ilmenite is the largest constituent of the Indian deposits and the others being Rutile, Leucoxene, Zircon, Garnet and Monazite. The minerals other than Garnet and Sillimanite have been classified as 'prescribed substances' under the Atomic Energy Act,1962. Under the said Act, it is mandatory to obtain licences from the designated competent authority in the Department of Atomic Energy for working of any mines and minerals from which prescribed substances can be obtained as well as for acquisition, production, possession, use, disposal, export or import of prescribed substances. Under the Industrial Policy Statement of 1991, the mining production of minerals classified as 'prescribed substances' has been reserved for the public sector. After considering the growing demand for these minerals and/or their value with the added product in the domestic as well as in the international market and the potential availability in the country, Government of India issued 'Policy on Exploitation of Beach Sand Minerals' in Resolution No.8/1(1)97-PSU/1422, dated 6-10-1998 allowing the private sector to set up such plants within the framework of certain broad guidelines. It is further asserted that under the provisions of MMRD Act, no person shall undertake mining operation, except with mining lease. The mining operation under the impugned G.O.Ms.No.7, dated 5-1-2002 for garnet sands would yield minerals like ilmenite, rutile, zircon etc., which are 'prescribed substances' in thousands of tonnage. These minerals are high value minerals and it is marketable grade also. These minerals co-exist with garnet and garnet cannot be mined without the said minerals like ilmenite etc. Therefore, under the provisions of the MMRD Act, the 4th respondent cannot mine these prescribed substances without getting licence. Respondent No.4 being a subsidiary of WGI with 74% FDI is not eligible for grant of mining and minerals separation of prescribed

substances. So, the grant of lease under the impugned G.O. contravenes the provisions of Section 4 of MMRD Act. Therefore, the mining lease granted in favour of 4th respondent is illegal. It is also stated that the 4th respondent being a subsidiary company and working for an international organization, which held 74% of FDI, cannot do mining activity of prescribed substances without inclusion of the same in the mining lease. As a matter of fact, the 4th respondent is not eligible for getting the mining lease under the Mineral Policy of the Government. Without lease of the said minerals, Atomic Mines Division cannot grant lease for handling. Condition No.(ii) of the impugned G.O. states that the tailings containing the prescribed substances shall be disposed of only to another entity, which holds a valid licence under the Mineral Concession Rules to process/separate the prescribed substances. This direction is without sanction of the law of land governing the subject of MMRD Act, Mineral Concession Rules, Atomic Energy Act and the Rules framed thereunder. This is a bureaucratic invention unknown to the law and to the wisdom of the Parliament, for the purpose of aiding and abetting a foreign company, to smuggle out the wealth of Nation. This is an escape route provided by the State Government to colonise indirectly the wealth of nation.

It is also stated that the 4th respondent, a subsidiary of foreign company, obtained mining lease for garnet sand from the Government of Tamilnadu. This was in a period before the issuance of Policy on Exploitation of Breach Sand Minerals issued in the year 1998. Since there was no policy, the 4th respondent was granted mining lease for garnet with a condition that while mining garnet, whatever the prescribed substances like ilmenite, rutile, zircon etc., are found, they should be handed over to Indian Rare Earth Limited, a Government of India Undertaking at free of cost. But, after the issuance of the Policy, it is very clear that a company like the 4th respondent, which is a subsidiary of a foreign company, is not allowed to engage the mining operation of ilmenite, rutile, zircon etc., even while mining garnet. Therefore, the 4th respondent indirectly mining the prescribed substances through the mining leases granted on 9-7-2001, 17-7-2001 and 30-7-2001 and also by manipulation for obtaining handling licence from the Department of Atomic Energy. The Ilmenite minerals therein would be exported by the 4th respondent without having export licence. The grant of mining lease and mining activity by the 4th respondent in Tamilnadu were challenged by the petitioner herein before the High Court of Madras

in W.P.No.13980 of 2004 and sought to quash the lease deed dated 9-7-2002 executed by the Government of Tamilnadu and the licence dated 17-9-2002 issued by the Department of Atomic Energy in favour of the 4th respondent herein. By an Order dated 13-5-2004 in W.P.M.P.No.16461 of 2004 in the above writ petition, an interim injunction was granted restraining the 4th respondent from mining, selling or exporting ilmenite (prescribed substances) pending disposal of the writ petition.

During the course of arguments, it is brought to the notice of this Court, even the mining and mineral licence granted to the 4th respondent herein by the Government of Tamilnadu was cancelled. Therefore, the Government of Andhra Pradesh could not have issued the licence to the 4th respondent and any licence issued to it, is in violation of the provisions of the MMRD Act, Atomic Energy Act and the Rules framed under the said Acts and also the Policy on Exploitation of Beach Sand Minerals.

Respondents 1 and 2 filed a counter affidavit stating that prior to the announcement of Beach Mineral Policy dated 6-10-1998, M/s.Indian Rare Earths Limited, a Public Sector Undertaking (PSU) and the Kerala Minerals and Metals Limited, a PSU of State Government of Kerala, were the only two organizations, which were permitted to undertake mining and mineral separation of beach sands to recover prescribed substances like ilmenite, rutile, zircon etc. After the announcement of the said Policy, the beach mineral sector was opened up and private companies, especially, the erstwhile Garnet Miners started approaching the 1st respondent seeking permission for mining prescribed substances. Under the Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules,1984, licences are issued on production of valid mining lease issued by the State Government concerned. Respondent No.4 was set up primarily to mine beach sand for separation and purification of garnet and for producing value added products therefrom for export purposes. There was a stipulation initially that during the process of their mining for garnet, if any minerals, which are notified as prescribed substances are recovered, the tailings containing the prescribed substances should be handed over to M/s.Indian Rare Earths Limited. Respondent No.4 not being a wholly owned Indian company is not eligible to undertake the activity of mineral separation for ilmenite as per the Beach Sand Mineral Policy dated 6-10-1998. However, respondents 1 and 2 had defended their action in issuing licence to the 4th respondent earlier in

Tamilnadu and it is stated that all the licences were issued with the approval of the Licensing Authority including the licences under Rule 3 of the Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules,1984 authorizing the 4th respondent to dispose of upto 6000 tonnes per annum of garnet tailings rich in ilmenite to entities already licensed under the said Rules. Further, the quantity was increased from time to time. The licence was valid upto 31-3-2004. Even the ilmenite substance was also authorized to be exported upto 23000 MTs as against 10500 MTs approved earlier by licence dated 29-4-2003 as amended on 19-8-2003. However, when the newly started company applied for licence for export of large quantities of ilmenite in quick succession, a detailed scrutiny of the relevant records was undertaken and it was revealed that the 4th respondent in Tamilnadu was a subsidiary organization of M/s.Heavy Mineral Incorporated, Canada. Since the licence issued in favour of the 4th respondent was found to be contrary to the new policy of the Department of Atomic Energy dated 6-10-1998, show cause notice was issued on 22-1-2004 and the licensing authority came to the conclusion that at every stage M/s.EMRL and the 4th respondent may have been within the law, but the facts remains that the policy has been by-passed. To take up corrective measures, the licensing authority cancelled the licence granted to the 4th respondent on 17-9-2002 vide the Department's letter dated 15/16-7-2004.

In the additional counter affidavit filed by the 1st respondent, it is asserted that the granting of licence and subsequent cancellation pertains to the operation of the 4th respondent with reference to their mining activities in K. Uvari village, Radhapuram Taluk, Tirunelveli District, Tamil Nadu and not with reference to Andhra Pradesh, which is the subject matter of this writ petition. Without seeking licence from the 1st respondent concerning the beach sand, covered by the dated 12-4-2001 of the Ministry of Mines, Government of India letter, the 4th respondent is not entitled to undertake any mining operation and dispose of any garnet tailings rich in ilmenite. No such licence was issued by the 1st respondent till date. Respondent No.4 cannot be permitted to mine and dispose of prescribed substances under the Atomic Energy Act,1962 without following the law prescribed and contrary to the Policy on Exploitation of Beach Sand Minerals of the Department of Atomic Energy, Government of India.

A detailed counter affidavit has been filed on behalf of respondents 3,5 and 6 supporting their action in granting mining lease in favour of the 4th respondent and asserting that there is no deviation of the provisions of MMRD Act. State Government followed all the precautions prescribed under the Act and the Rules while granting licence in favour of the 4th respondent, subject to certain conditions. State Government also obtained prior approval of the Government of India before grant of mining lease for garnet in favour of the 4th respondent-company. Further, 4th respondent also submitted mining plan duly approved by the Central Government i.e. Indian Bureau of Mines before the State Government at the time of grant of mining lease. In addition to the mining of garnet, which was granted under the impugned G.O., the 4th respondent also applied for inclusion of associated minerals under the Mineral Concession Rules,1960, which is under consideration of the State Government. Respondent No.4 had to obtain the licence from the Department of Atomic Energy (DAE) for mining ilmenite, rutile, zircon etc., after obtaining permission from the State Government for inclusion as associated minerals. State Government had also taken all precautions while granting mining lease as required under Rule 66A of the Mineral Concession Rules,1960. Respondent No.4 had applied for inclusion of associated minerals in addition to garnet before the State Government and the same will be granted after obtaining approval of the Government of India and DAE. Therefore, State Government has followed the provisions of the Acts and Rules relating to grant of mining leases and obtained prior approval of the Central Government before granting lease in favour of the 4th respondent. However, it was asserted in the counter that the 4th respondent not being a wholly owned Indian company, is not eligible to undertake activity of mineral separation for ilmenite as per the Beach Sand Mineral Policy dated 6-10-1998. Respondent No.4 cannot conduct mining operations for ilmenite and other associated minerals without prior approval of the Atomic Mineral Division.

Respondent No.4 filed a detailed counter affidavit denying the allegations made by the petitioner and other respondents. It is asserted that the licence, which was sought to be cancelled by the Government of Tamilnadu is a subject matter of appeal under Rule 13 of Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules,1984 before the Central Government and the same is pending. Even the licence granted in favour of M/s.EMRL, Tuticorin, Tamilnadu

was also challenged before the High Court of Madras, Madurai Bench in W.P.No.547 of 2004. While admitting the said writ petition, stay of impugned order was granted subject to the condition that the petitioner therein should not dispose of the processed ilmenites pending further orders. The licence granted by the Government of Andhra Pradesh through the impugned G.O. is nothing to do with the licence, which was a subject matter of the above appeal and writ petition. In fact, 4th respondent had not applied to the 1st respondent for grant of licence for handling the prescribed substances arising out of garnet mining lease granted under the impugned G.O. In the additional affidavit filed by the 4th respondent, it is asserted that the allegation that the State Government has not obtained the prior approval of the Government of India in granting the lease under the impugned G.O. is baseless and false. Government of Andhra Pradesh sought prior approval of the Government of India under Section 5(1) of the Mines and Minerals (Development & Regulation) Act,1957 for grant of mining lease for Beach Sand in favour of the 4th respondent and also under Rule 27(3) of the Mineral Concession Rules,1960 for imposing special conditions. By letter dated 13-4-2001, the Government of India informed the State Government that the Ministry of Mines had no objection to the grant of mining lease to the 4th respondent for a period of 30 years by the State Government and the approval of the Central Government under Rule 27(3) of the Rules was also conveyed for the imposition of certain conditions in the mining lease deed as suggested by the Department of Atomic Energy. In fact, in Form-K, mining lease dated 24-6-2002, was executed by the State Government in favour of the 4th respondent, in which it was specifically stated that the Central Government had approved the grant of lease and then the State Government granted the lease.

Heard the learned counsel for the parties *in extenso* and perused the entire material on record.

From the above facts and the contentions raised by both parties, admittedly, the mining lease under the impugned Governmental Order was issued in favour of the 4th respondent after obtaining prior permission of the Central Government as required under Section 5(1) of the MMRD Act and Rule 27(3) of the Mineral Concession Rules,1960 and no licence for mining of ilmenite is granted in favour of the 4th respondent by the Department of Atomic Energy of Government of India till date. Therefore, the only question that arises for consideration of this Court, as

stated by the learned counsel for the petitioner, is that whether the lease granted under the impugned G.O. is contrary to the policy adopted by the Government of India in its Resolution No.8/1(1)/97-PSU/1422 and the same is contrary to the provisions of the MMRD Act and the Atomic Energy Act,1962 and the Rules framed thereunder ?

Before going into the question proper, it may be apt to note the provisions of Section 4 and 5 of the MMRD Act, Section 5 of the Atomic Energy Act, Rules 27(3) and 66A of the Mineral Concession Rules,1960 and Rule 3 of Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules,1984 which read as under:

> **"<u>Sections 4 and 5 of MMDS Act:</u>**
>
> **Sec.4 Prospecting or mining operations to be under licence or lease-**
>
> (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement
>
> Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956.]
>
> [Provided also that nothing in this section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]
>
> (1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.
>
> (2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.
>
> (3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or

mining lease.

Sec. 5 Restrictions on the grant of prospecting licences or mining leases

(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person-

(a) is an Indian national, or a company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and

(b) satisfies such conditions as may be prescribed :

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation : For the purposes of this sub-section, a person shall be deemed to be an Indian national-- (a) in case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and (b) in the case if an individual only if he is a citizen of India

(2) No mining lease shall be granted by the State Government unless it is satisfied that-

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

(b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.

Section 5 of Atomic Energy Act,1962:

Control over mining or concentration of substances containing uranium

(1) If the Central Government is satisfied that any person is mining or is about to mine any substance from which, in the opinion of the Central Government, uranium can be or may reasonably be expected to be, isolated or extracted, or is engaged or is about to be engaged in treating or concentrating by any physical, chemical or metallurgical process any substance from which, in the opinion of the Central Government, uranium can be or may reasonably be expected to be, isolated or extracted, the Central Government may by notice in writing given to that person either-

(a) require him in conducting the mining operations or in treating or concentrating the substance aforesaid to comply with such terms and conditions and adopt such processes as the Central Government may in the notice, or from time to time thereafter, think fit to specify, or

(b) totally prohibit him from conducting the mining operations or treating or concentrating the substance aforesaid.

(2) Where any terms and conditions are imposed on any person conducting any mining operations or treating or concentrating any substance under cl.(a) of sub-section (1), the Central Government may, having regard to the nature of the terms and conditions, decide as to whether or not to pay any compensation to that person and the

decision of the Central Government shall be final: Provided that where the Central Government decides not to pay any compensation, it shall record in writing a brief statement giving the reasons for such decision.

(3) Where the Central Government decides to pay any compensation under sub- section (2), the amount thereof shall be determined in accordance with Section 21 but in calculating the compensation payable, no account shall be taken of the value of any uranium contained in the substance referred to in sub-section (1).

(4) Where any mining operation or any process of treatment or concentration of any substance is prohibited under clause (b) of sub-section (1), the Central Government shall pay compensation to the person conducting the mining operations or using the process of treatment or concentration and the amount of such compensation shall be determined in accordance with Section 21 but in calculating the compensation payable, no account shall be taken of the value of any uranium contained in the substance.

Clause 5.- "This clause, inter alia, empowers the Central Government to impose certain terms and conditions on persons engaged in mining substances from which uranium can be isolated or extracted." - S.O.R. - Gaz. of Ind., 13-8-1962, Pt. II, S. 2. Ext., p. 633.

Rules 27(3) and 66A of the Mineral Concession Rules,1960

Rule 27 Conditions.

(1) and (2)……

(3) The State Government may, either with the previous approval of the Central Government or at the instance of the Central Government, impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals.

66A. (1) Notwithstanding anything contained in the Rules, the holder of a prospecting licence or mining lease for a mineral other than a minor mineral shall be free to undertake prospecting/mining operations also in respect of the atomic minerals, in the area held by him on the conditions that-

(i) if in the course of prospecting/mining operations, he discovers any atomic mineral/minerals, he shall within 60 days from the date of discovery of such minerals] report the fact of such discovery to the Director, Atomic Minerals Directorate for Exploration and Research, Hyderabad and the Director of Geology and Mining of the State in which the prospecting or mining operations are carried on];

[(ii) that the quantities of atomic minerals recovered incidental to such prospecting or mining operations shall be collected and stacked separately and a report to that effect sent to the Secretary, Department of Atomic Energy, Mumbai and the Director, Atomic Minerals Directorate for Exploration and Research, Hyderabad, every three months for such further action by the licensee or lessee as maybe directed by the Atomic Minerals Directorate for Exploration and Research or the Department of Atomic Energy.]

(2) The licensee or lessee referred to in sub-rule (1) shall be free to remove and dispose of any quantity of atomic minerals, on obtaining a licence for that purpose from the Department of Atomic Energy and on payment of royalty to the State Government.

(3) The licensee or lessee referred to in sub-rule (1) shall, within the period referred to therein, apply to the Secretary, Department of Atomic Energy, Mumbai, through the State Government, for grant of a

licence to handle the said atomic minerals under the provisions of the Atomic Energy Act, 1962 (33 of 1962):

PROVIDED that if in the opinion of the Department of Atomic Energy the atomic mineral/minerals recovered incidentally to such prospecting/mining operations is not of economically exploitable grade or the quantity found is insignificant, it may advise the State Government to exempt the licensee/lessee from obtaining a separate licence/lease for/or inclusion of the atomic minerals under these Rules.]

(4) The provisions of clause (ii) of sub-rule (1) or rule 14 and clause (b) of sub-rule (1) of rule 27 shall not apply in relation to atomic minerals.

[(5) For the purpose of rule 66(1)(b) and this rule, 'atomic minerals' means the minerals listed in Part B of the First Schedule to Act.]

RULE 3 of Atomic Energy (Working of the Mines, Minerals and Handling of the Prescribed Substances) Rules,1984

Licence for mining, milling, processing, and/or handling of prescribed substance

No person shall mine, mill, process and/or handle any ore mineral or other material from which any one or more of the prescribed substances can be extracted, without obtaining a licence in Form "B" from the Licensing Authority and except in accordance with the terms and conditions of such licence:

Provided that, any person already engaged in mining, milling processing and/or handling prescribed substances at the time these rules came into force, shall within a period of six months from the date of these rules coming into force, make an application in Form "A" to the Licensing Authority for the issue of the requisite licence :

Provided further that the applicant may continue the operations until the Licensing Authority takes a decision on his application and thereafter he shall abide by the decision.

Reading the above provisions and the facts as have been on record and to our notice, there is absolutely no doubt that there was no flaw in granting mining lease in favour of the 4th respondent by the State Government for quarrying Garnet, since the State Government has followed the procedure as required under the law and the policy of the Government of India dated 6-10-1998. Ilmenite said to be one of the prescribed substances is a mineral, which also came out while mining garnet. Insofar as mining of garnet is concerned, neither there is any prohibition nor the lease granted by the State Government can be said to be illegal and respondents 1 and 2 while filing a detailed counter affidavit also asserted that the 4th respondent has not been granted licence for handling ilmenite etc., which are associated products, which came out while mining garnet, since the initial lease granted was

only for mining Garnet and the associated products when discovered do require a licence under the Atomic Energy Act,1962 and also Rule 3 of the Atomic Energy (Working of Mines, Minerals & Handling of Prescribed Substances) Rules,1984. Since it is asserted by the Government of India and the State Government that such a licence was not granted, the 4th respondent may not be entitled to handle associated products, which are said to be prescribed substances. Rule 66A referred to above contemplates that notwithstanding anything contained in the Rules, the holder of a prospecting licence or mining lease for a mineral other than a minor mineral, shall be free to undertake prospecting/mining operations also in respect of atomic minerals, in the area held by him on certain conditions. The conditions being that if in the course of prospecting mining operations, the Miner discovers any atomic mineral/minerals, he shall inform the same to the Director, Atomic Minerals, Directorate for Exploration and Research, Hyderabad and the Director of Geology and Mining of the State in which the prospecting or mining operations are carried on within 60 days from the date of discovery of such minerals and the quantities of atomic minerals recovered incidental to such prospecting or mining operations shall be collected and stacked separately and a report to that effect be sent to the Secretary, Department of Atomic Energy, Mumbai and the Director, Atomic Minerals Directorate for Exploration and Research, Hyderabad every three months for such further action as directed by the Atomic Minerals Directorate. After obtaining licence for that purpose, the licensee is free to remove and dispose of the atomic minerals on the proper application made by the lessee to the concerned authority for grant of a licence to handle the same under the provisions of the Atomic Energy Act,1962. If the atomic mineral was found to be not of economically exploitable grade or the quantity found is insignificant, the State Government may exempt the lessee from obtaining a separate licence under the Rules. Thus, Rule 66A of the Mineral Concession Rules,1960 takes care of the situation that emerges during the course of mining as to the prescribed substances etc. Therefore, the contention of the learned counsel for petitioner that under Rule 3 of the Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules,1984 even a mining lease itself is not permissible once the associated mineral like ilmenite was found along with garnet even though a valid lease was obtained by the 4th respondent for mining garnet etc., is without any substance. Section 5 of the Atomic Energy Act contemplates that if it is in the opinion of the Central Government that Uranium can be or may be reasonably to be expected to be isolated or extracted, or is engaged or

is about to be engaged in treating or concentrating by any physical, chemical or metallurgical process any substance, it may give notice in writing to the person operating requiring him to comply with such terms and conditions and adopt such processes as the Central Government may from time to time think fit or totally prohibit him from conducting mining operations or treating or concentrating the substances.

Rule 3 of the Atomic Energy (Working of the Mines, Minerals and Handling of the Prescribed Substances) Rules,1984 contemplates that no person shall mine, mill or process and/or handle any ore mineral or other mineral from which one or more of the prescribed substances can be extracted without obtaining a licence in Form-B from the Licensing Authority, except in accordance with the terms and conditions of such licence and an applicant may continue to operate until the licensing authority takes a decision on his application and thereafter he shall abide by the decision. In this case, admittedly, 4th respondent was granted with lease under the impugned G.O. with certain terms and conditions, which are in tune with the conditions laid down by the Central Government under Resolution No.8/1(1)/97-PSU/1422. Therefore, the lease granted in favour of the 4th respondent by the State Government cannot be said to be bad in law or contrary to the provisions of the above enactments and the Rules framed thereunder.

Now, all the officials respondents are aware of the situation that the 4th respondent has not been granted with any licence as required under Rule 66A of the Mineral Concession Rules,1960 or Rule 3 of the Atomic Energy (Working of the Mines, Minerals and Handling of the Prescribed Substances) Rules,1984. As such, granting lease itself cannot be termed as contrary to the law. It is for the Central Government to decide as to whether any licence could be granted to the 4th respondent under Rule 66A of the Rules and Section 5 of the Atomic Energy Act and Rule 3 of the Atomic Energy (Working of the Mines, Minerals and Handling of the Prescribed Substances) Rules,1984. Petitioner has not made out any case to interfere with the lease granted by the State Government in favour of the 4th respondent under the impugned G.O. The contention of the petitioner that the 4th respondent who was granted with a similar licence by the Government of Tamilnadu has already been

cancelled and, therefore, the granting of lease in favour of the 4th respondent by the Government of Andhra Pradesh is in violation of the policy of the Central Government dated 6-10-1998 apart from the provisions of the above Acts and the Rules, cannot be accepted. Such a stage has not arisen in the instant case. Only at a stage when during mining the garnet by the 4th respondent under the lease granted by the State Government incidentally ilmenite is discovered, the 4th respondent would require a licence from the Central Government under the Atomic Energy Act and the Rules to handle the same and not before that.

From the facts and circumstances on record, we may also notice another fact that this is not a petition filed in public interest, but is a private interest litigation. The petitioner having successfully stalled the mining operations of the 4th respondent in the State of Tamilnadu, is trying to create one hurdle or the other for the 4th respondent. The impugned G.O. was issued on 5-1-2002, while the writ petition was filed only on 21-7-2004 by a rival trader. The Courts are expected not to interfere in such matters. The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as PIL. The petitioner having successfully seen cancelling of the lease and licence granted to the 4th respondent to the Government by Tamil Nadu and the Central Government, with over enthusiasm and to create hurdles in the way of the 4th respondent filed the present writ petition. The Central Government is alive to the problem and has already taken action with regard to the licence granted by it in favour of respondent No.4 and the State of Tamilnadu has also cancelled the lease. Further, it is asserted by respondents 3,5 and 6 that even in the State of Andhra Pradesh though the lease was obtained as per law, it is opposed to the policy adopted by the Central Government with regard to the associated products, which are being taken care of under various provisions of the above Acts and Rules as 'prescribed substances'.

Since the Central Government is already seized of the situation and till the Government of India grants permission, 4th respondent cannot handle the associated products and such a stage has not yet materialized. We feel that there is no substance in the writ petition, which is liable to be dismissed.

Accordingly, the writ petition is dismissed with costs quantified at Rs.10,000/-.

(DEVINDER GUPTA, CJ)

26th October,2004

(C.V. RAMULU,J)

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Department of Atomic Energy,

Government of India, Chatrapati Shivaji Maharaj
Marg, Mumbai-400 001

2 The Secretary, Ministry of Mines & Minerals, Government of India,
New Delhi

3 The Secretary, Department of Industries and

Commerce (M.III) Department, Government of Andhra Pradesh,

Secretariat, Hyderabad .

4 The Chairman & Managing Director,

M/s Transworld Garnet India Pvt Ltd.,
Ramaniyam Arcade, III Floor, E-28, II Avenue, Beasant Nagar, Chennai

5 The District Collector, Srikakulam District at Srikakulam

6 The Commissioner of Geology & Mining,

Department of Geolgoy & Mining, Hyderabad

7. 2CCs to G.P. for Industries & Commerce, High court Buildings, Hyderabad (OUT)

8. 2CD copies.

-

-